

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7173

IN THE MATTER OF:

Served May 7, 2003

CHIKA TRANSPORT SERVICE, INC.,)
WMATC No. 348, Investigation of)
Tariff Violations)

Case No. MP-2002-124

This matter is before the Commission on respondent's response to Order No. 7014, served January 24, 2003. The order gave respondent thirty days to file a compliance report and show cause why Certificate No. 348 should not be revoked.

I. BACKGROUND

Under the Compact, each carrier must file a tariff with the Commission and keep a copy available for public inspection.¹ A carrier may not charge a rate or fare for transportation subject to the Compact other than the applicable rate or fare specified in a tariff filed with the Commission and in effect at the time.²

Last September, Commission staff determined that respondent had no effective tariff on file with the Commission. The only tariff respondent had ever filed expired on December 31, 1998. Staff advised respondent to file a new tariff no later than October 4, 2002. Respondent complied, but the new tariff was rejected as unacceptable on October 10, 2002. Staff advised respondent how to correct the tariff for resubmission, but as of December 4, 2002, respondent had yet to file a corrected version. This investigation followed.

The initial order in this proceeding, Order No. 6933, served December 4, 2002, directed respondent to file an acceptable tariff within thirty days and cease operating in the Metropolitan District unless and until otherwise ordered. The order also directed respondent to produce any and all documents relating to its operations in the Metropolitan District after December 31, 1998, and leading up to the issuance of Order No. 6933.

Respondent filed an acceptable contract tariff on January 8, 2003, but failed to produce any documents relating to its operations during the four years it had no tariff on file with the Commission. Order No. 7014, served January 24, 2003, consequently suspended Certificate No. 348 and gave respondent thirty days to verify that it

¹ Compact, tit. II, art. XI, § 14(a).

² Compact, tit. II, art. XI, § 14(c); Commission Regulation No. 55.

had ceased operating and to show good cause why Certificate No. 348 should not be revoked.

On February 21, 2003, respondent filed four one-year contract tariffs covering calendar years 1999 through 2002. On February 25, 2003, respondent filed a supplemental response.

II. RESPONDENT'S STATUS AS A PASSENGER CARRIER

A threshold issue raised by the supplemental response is whether respondent is a passenger carrier or simply a lessor of vehicles. Although to date respondent has submitted six separate contract tariffs, including the tariff that expired in 1998 and the one currently in effect, respondent now takes the position that it does not transport passengers for hire in the Metropolitan District and never has. Respondent claims that it simply leases vans. Because the Compact only applies to passenger carriers,³ we must determine whether respondent is a lessor or a carrier.

Each of the contracts at issue in this proceeding purports to be a "Transportation Service Agreement" between respondent and DC Health Care Inc. (DCHC). Each recites that: (1) DCHC owns, operates and manages a community residence facility (intermediate health care facilities in the case of respondent's current contract tariff); (2) respondent is in the business of providing transportation services; and (3) it is the intention of the parties to conclude an agreement for transportation services between them. These terms clearly illustrate that the contracts between respondent and DCHC are more than mere lease agreements. But do they make respondent a carrier?

The Compact defines a "carrier" as "a person who engages in the transportation of passengers by motor vehicle or other form or means of conveyance for hire."⁴ The definition of a "person" under the Compact includes a corporation.⁵ Commission precedent holds that a carrier is a person who assumes the risk and responsibility of conducting passenger transportation operations.⁶ Looking at respondent's DCHC contracts, we see that respondent assumes substantially all of the risk and most of the responsibility.

As to risk, respondent agrees to obtain a \$1.5 million combined-single-limit insurance policy naming DCHC as an additional insured and to "hold [DCHC] harmless from all claims resulting from and/or related to the transportation services provided by [respondent]." Respondent agrees to pay any "attorney fees, interest

³ Compact, tit. II, art. XI, § 1.

⁴ Compact, tit. II, art. XI, § 4(a).

⁵ Compact, tit. II, art. XI, § 4(c).

⁶ In re LAM Assocs., Inc., No. AP-01-74, Order No. 6398 (Oct. 22, 2001); In re Government Contracting Resources, Inc., t/a GCR, Inc., No. AP-97-56, Order No. 5236 (Dec. 3, 1997).

and court costs that [DCHC] may incur to defend itself as a result of the transportation services" of respondent. In return, DCHC agrees to pay respondent "\$1,900 per month" -- \$1,900 per month, per facility under the current contract. Thus, respondent's DCHC contracts place all of the risk of liability loss and all of the risk associated with cost variability on respondent.

As for responsibility, the contracts state that respondent agrees to "provide transportation services as directed by [DCHC]" and "comply with all permits . . . and licensing requirements" -- "WMATC requirements" in the case of the current contract. The supplemental response states that respondent is responsible for furnishing, maintaining and fueling the necessary vehicles. The current contract states that DCHC is responsible for furnishing drivers, but the supplemental response states that respondent is responsible for paying their "tickets," and under the current contract respondent or its agent "must attend all training and meeting [sic] related to transportation conducted by DCHC, DC Department of Transportation and the Bureau of Mental Retardation." Clearly, most of the responsibility falls on respondent's shoulders.

On balance, we find that respondent is, and has been, a carrier within the meaning of the Compact with respect to services provided under its contracts with DCHC.

II. POST-1998 TARIFF VIOLATIONS

Respondent has filed evidence of payment received from DCHC after 1998 and before 2003 consistent with the four one-year contract tariffs for 1999-2002 that respondent neglected to file until this year. We therefore find that in each of the four years 1999 through 2002, respondent accepted compensation for transportation services without an effective tariff on file with the Commission, in violation of Article XI, Section 14, of the Compact and Commission Regulation No. 55.

We further find that these violations were committed knowingly and willfully within the meaning of the Compact. "Knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁷ "Willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard.⁸ Employee negligence is no defense.⁹

It is not just the Compact and Commission regulations that inform a carrier of its tariff obligations. Each certificate of authority, including respondent's, expressly restricts a carrier's

⁷ In re Shirley L. Nelson, t/a L&N Transp., No. MP-96-16, Order No. 4834 (May 9, 1996).

⁸ Id.

⁹ Id.

operations to those "conducted according to the named carrier's applicable tariff on file with the Commission." The Commission's contract tariff cover form, including the one filed by respondent in 1998, requires a carrier to specify the expiration date before filing. Respondent simply has no excuse for not timely filing its DCHC contracts for 1999-2002.

III. ASSESSMENT OF CIVIL FORFEITURES

A person who knowingly and willfully violates a provision of the Compact is subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for each subsequent violation.¹⁰

We shall assess a forfeiture against respondent in the amount of \$250¹¹ for each of the four years respondent knowingly and willfully operated without an effective tariff in violation of Article XI, Section 14, of the Compact and Commission Regulation No. 55, for a total forfeiture of \$1,000.

We also shall assess a forfeiture against respondent in the amount of \$250 each¹² for knowingly and willfully disregarding Order Nos. 6933 and 7014, for a total forfeiture of \$500.

IV. VEHICLE MARKINGS, LEASES, REGISTRATION AND SAFETY

Several issues surfaced during the course of this proceeding that necessitate inspection of respondent's vehicles.

First, in support of its assertion that it merely leases vans to DCHC, respondent asserted that it does not control the usage of the vans it furnishes under the DCHC contract tariff. This calls into question respondent's compliance with Regulation No. 61, which requires that each carrier display its name and WMATC number on both sides of each revenue vehicle.

Second, unofficial Maryland Motor Vehicle Administration records obtained by the Commission reveal that at least five of the nine vehicles listed in respondent's report are not owned by respondent, but no leases are on file with the Commission for those vehicles as required by Regulation No. 62-02.

¹⁰ Compact, tit. II, art. XIII, § 6(f).

¹¹ See Order No. 4834 (assessing forfeiture of \$250 for tariff violation).

¹² See In re Junior's Enters., Inc., No. MP-01-103, Order No. 6549 (Feb. 21, 2002) (assessing forfeiture of \$250 for disregarding Commission order).

Third, the Compact contemplates carrier compliance with basic vehicle registration laws,¹³ but according to respondent's annual report for 2002, seven of its nine vehicles have Maryland "M" tags, which the Commission recognizes as private tags, not for-hire tags.¹⁴

We will direct respondent to produce its revenue vehicles for inspection to verify respondent's compliance with Regulation Nos. 61 and 62 and local vehicle registration laws. The inspections will afford the Commission an opportunity to verify respondent's compliance with the safety mandates of Article XI, Section V, of the Compact, as well.

V. CONCLUSION.

Inasmuch as respondent has filed an effective tariff and produced the core documents required by Order No. 6933, we shall lift the suspension prescribed in Order No. 7014. But respondent will be directed to pay a combined forfeiture of \$1,500 and produce its revenue vehicles for inspection.

THEREFORE, IT IS ORDERED:

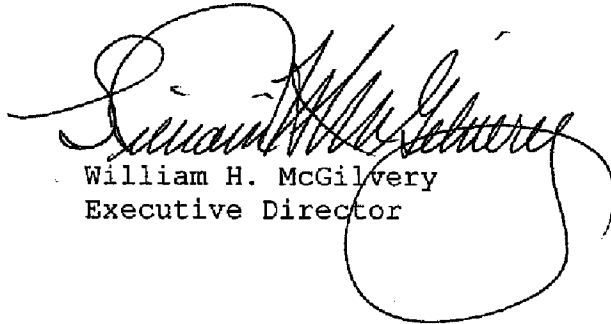
1. That the suspension of Certificate No. 348 is hereby lifted.
2. That the Commission hereby assesses a combined civil forfeiture against respondent in the amount of \$1,500 for knowingly and willfully violating Article XI, Section 14, of the Compact, Commission Regulation No. 55, and Commission Order Nos. 6933 and 7014.
3. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of one thousand five hundred dollars (\$1,500).
4. That respondent is hereby directed to produce all revenue vehicles for inspection by Commission staff within thirty days.

¹³ See Compact, tit. II, art. VI (Compact does not amend, alter, or affect power of signatories to levy, assess, and collect fees for the licensing of vehicles); see also In re V.I.P. Tours, No. AP-83-10, Order No. 2504 (Dec. 2, 1983) (on reconsideration) (Commission may investigate transportation-related violations of non-WMATC laws), aff'd per curiam, No. 83-2341, judgment (D.C. Cir. Jan. 25, 1985).

¹⁴ In re VOCA Corp. of Washington, D.C., MP-03-30, Order No. 7119 (Apr. 8, 2003); In re Zohery Tours International, Inc., MP-02-46, Order No. 6911, n.11 (Nov. 18, 2002). The Commission recognizes Maryland "B", "LM" and "P" plates as for-hire plates.

5. That Certificate of Authority No. 348 shall stand suspended, and be subject to revocation without further notice, upon respondent's failure to timely comply with the requirements of this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, MILLER, AND MCDONALD:



William H. McGilvery
Executive Director